IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LETTERS PATENT APPEAL NO. 64 OF 2007

IN

WRIT PETITION NO. 468 OF 1987

MR. GOVINDLAL NARAYAN MEHTA ... APPELLANT.

VS.

BAJAJ TEMPO LTD. ... RESPONDENTS.

MR. KULKARNI FOR THE APPELLANT.

MR. S.K.TALSANIA SR.ADV. WITH SANJAY UDESHI FOR RESPONDENTS.

.....

CORAM : J.N.Patel and A.A.Sayed, JJ.

DATE : July 31, 2007.

.....

P.C.

1. Heard.

2. The appellant has filed dispute before the Labour Court, challenging his termination, wherein a preliminary issue was raised that the appellant was

not a workman. The Labour Court gave a finding in favour of the Appellant, which was challenged by the Respondent Employer before the Industrial Court in Revision. The Revisional Court found that the preliminary issue decided by the Labour Court that the Appellant is a workman, was not correct, as the evidence on record clearly show that the appellant was not a workman. That finding came to be challenged by filing the writ petition. The learned Single Judge up held the conclusion arrived at by the Industrial Court and that is how this LPA has been filed.

3. The learned Counsel appearing for the Appellant submitted that the case of the appellant falls within the definition of "workman" under Section 2(s) of the Industrial Disputes Act and that his designation and Salary are not the only criteria for holding that he is not a workman. It is further submitted that the findings on the preliminary issue, arrived at by the Labour Court, could not have been interfered by the Industrial Court in its limited revisional jurisdiction. On the other hand, the Industrial Court has gone into the evidence and reversed the findings, which is not proper. It is submitted that the nature of work assigned to the

appellant clearly discloses that the appellant was a member of clerical staff and therefore, the impugned decision deserves to be quashed and set aside.

4. The learned Counsel appearing for the Respondents, on the other hand, submitted that the impugned Order does not call for any interference as the law is now well settled in that context and has placed reliance on the decision, rendered in case of SONPAT COOPERATIVE SUGAR MILLS LTD. VS. AJIT SINGH, REPORTED IN (2005) 3 SCC 232. It is submitted that the Supreme Court has, in terms specified criteria to ascertain whether an employee is a "workman" or not, by considering various decisions. In the present case, as the appellant was initially appointed as an Accountant and then posted as Senior Executive - Class-I in the Purchase Department, by no stretch of imagination, he can be called as a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

5. In order to appreciate the findings arrived at by the Industrial Court, our attention was also drawn to the evidence led by the parties on the preliminary issue. We find that the learned Single Judge was justified in upholding the decision of the

Industrial Court, as the dominant factor which emerges from the record is that the Petitioner's designation was Senior Executive in Purchase Department, drawing salary more than Rs. 8,000/- and during his entire service tenure, was never member of any Union or was extended any benefit under any settlement between the Union and the Company and also considering the nature of the duties performed by the Appellant, he cannot be said to be "workman" within the meaning of Section 2(s) of the Industrial Disputes Act.

6. Consequently we find that the Single Judge has not committed any illegality, or error in passing the impugned Order so as to call for any interference.

7. Consequently, the Appeal is dismissed.

.....

[J.N.Patel, J.]

[A.A.Sayed, J.]